

sixth, seventh, and binding award of the jury,—which expected that the management of the jury, the management of the dispute may occur of Justice, to have been Commanding Officer, wrong, the his acts, test a right to ex- so, from the

ed to be ne- after vested plain mean- original pro- execution of otherwise himself Officer, as the original trespassed

e Act, and and it will necessary for decision ic princi- on in the of men of otherwise

quired for sed who- can dig , which are re- d which g of it, without materials refer to pressly g, cut, licit, to requir-

ed for the service which might be found in the neighborhood of, and necessary to the said works. It has been supposed, and has even been urged by many, that such materials are private property, as much so, as any other private property, which is always a fair subject of competition in the market, and which must be bargained for in the usual way, and therefore, that supposing any materials required for the service could not be obtained, but at a distance from the scene of operations, upon lands that could not be proved to be necessary for any one purpose specified in the Act, that therefore the Commanding Officer must purchase such materials from the owners of them, in the same manner as he would purchase Cattle, or Horses, or hire men to work upon the Canal. Whatever color of Justice, may seem to have, such an opinion, it has no force in law. There can be nothing more explicit than the words of the Statute, and in fact, this provision evidently was expressly made, to prevent any hinderance in the construction of the works, by the delay that would necessarily be occasioned, by advertising and bargaining for the requisite materials. The Act, in the Sixteenth Section already quoted, positively provides, that AFTER the Canal shall have been completed, and the lands necessary for the service, set apart, and vested in the Crown, in case of any sudden breach, which may happen from floods, or any other unexpected accident, the Commanding Officer may, without delay, or interruption, of any kind, enter into any land, or ground, and get, and carry away, all such materials, as may be necessary, and proper, for repairing the said breach, or damage, without any previous treaty whatever, with the owners of such lands, doing as little damage, as the nature of the case will admit. The propriety of a provision of this kind, will clearly appear, when it is considered, that the Canal passes through tracts of Country wholly uninhabited, and uncultivated, that the real proprietors were in most cases not known, and could not be ascertained without considerable delay, trouble, and expence, and when ascertained, perhaps found to be resident in some remote part of the Province, or even in a foreign land. Such delay would afford ample room, for such speculations, and impositions, as might in fact, utterly prevent the execution of the work. I here allude only to materials found upon lands at a distance from the works, beyond the boundaries of the land, considered necessary by the Commanding Officer for making the Canal.

It cannot for a moment be supposed, that the Commanding Officer was at liberty to take such materials without paying for them, but when it can be clearly shown, that in appropriating such materials he had been actuated by no other motive than a strict regard to the faithful execution of his duty; that such materials were necessary for the service; that they were the nearest, & most convenient known, that could be obtained, and that he was willing to pay for them at a fair valuation; no jury of the Country could be found, who would subject him to the payment of damages, to litigious individuals, who might be so ill disposed as to advance illegal and unjustifiable claims. Such are the facts respecting the provisions of the Rideau Canal Act. That they have been correctly viewed the result of the actions brought against the Commanding Officer clearly prove, and as these trials have demon-